

AMENDED IN SENATE JUNE 11, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2669

Introduced by Committee on Natural Resources (Assembly Members Chesbro (Chair), Brownley, Dickinson, Halderman, Huffman, Monning, and Skinner)

March 5, 2012

An act to amend Sections 21080, 21080.5, 21080.23, 21080.24, 21083.05, 21084, 21091, 21092.6, 21094, 21151.1, 21159.9, and 21167.10 of, and to repeal Sections ~~21169, 21170, 21171, 21172, 21172.5, 21175, and 21176~~ of, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 2669, as amended, Committee on Natural Resources. Environmental quality: California Environmental Quality Act.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

This bill would repeal obsolete and duplicative provisions from CEQA.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21080 of the Public Resources Code is
2 amended to read:
3 21080. (a) Except as otherwise provided in this division, this
4 division shall apply to discretionary projects proposed to be carried
5 out or approved by public agencies, including, but not limited to,
6 the enactment and amendment of zoning ordinances, the issuance
7 of zoning variances, the issuance of conditional use permits, and
8 the approval of tentative subdivision maps unless the project is
9 exempt from this division.
10 (b) This division does not apply to any of the following
11 activities:
12 (1) Ministerial projects proposed to be carried out or approved
13 by public agencies.
14 (2) Emergency repairs to public service facilities necessary to
15 maintain service.
16 (3) Projects undertaken, carried out, or approved by a public
17 agency to maintain, repair, restore, demolish, or replace property
18 or facilities damaged or destroyed as a result of a disaster in a
19 disaster-stricken area in which a state of emergency has been
20 proclaimed by the Governor pursuant to Chapter 7 (commencing
21 with Section 8550) of Division 1 of Title 2 of the Government
22 Code.
23 (4) Specific actions necessary to prevent or mitigate an
24 emergency.
25 (5) Projects which a public agency rejects or disapproves.
26 (6) Actions undertaken by a public agency relating to any
27 thermal powerplant site or facility, including the expenditure,
28 obligation, or encumbrance of funds by a public agency for
29 planning, engineering, or design purposes, or for the conditional
30 sale or purchase of equipment, fuel, water (except groundwater),
31 steam, or power for a thermal powerplant, if the powerplant site
32 and related facility will be the subject of an environmental impact
33 report, negative declaration, or other document, prepared pursuant
34 to a regulatory program certified pursuant to Section 21080.5,
35 which will be prepared by the State Energy Resources Conservation

1 and Development Commission, by the Public Utilities Commission,
2 or by the city or county in which the powerplant and related facility
3 would be located if the environmental impact report, negative
4 declaration, or document includes the environmental impact, if
5 any, of the action described in this paragraph.

6 (7) Activities or approvals necessary to the bidding for, hosting
7 or staging of, and funding or carrying out of, an Olympic games
8 under the authority of the International Olympic Committee, except
9 for the construction of facilities necessary for the Olympic games.

10 (8) The establishment, modification, structuring, restructuring,
11 or approval of rates, tolls, fares, or other charges by public agencies
12 which the public agency finds are for the purpose of (A) meeting
13 operating expenses, including employee wage rates and fringe
14 benefits, (B) purchasing or leasing supplies, equipment, or
15 materials, (C) meeting financial reserve needs and requirements,
16 (D) obtaining funds for capital projects necessary to maintain
17 service within existing service areas, or (E) obtaining funds
18 necessary to maintain those intracity transfers as are authorized
19 by city charter. The public agency shall incorporate written findings
20 in the record of any proceeding in which an exemption under this
21 paragraph is claimed setting forth with specificity the basis for the
22 claim of exemption.

23 (9) All classes of projects designated pursuant to Section 21084.

24 (10) A project for the institution or increase of passenger or
25 commuter services on rail or highway rights-of-way already in
26 use, including modernization of existing stations and parking
27 facilities.

28 (11) A project for the institution or increase of passenger or
29 commuter service on high-occupancy vehicle lanes already in use,
30 including the modernization of existing stations and parking
31 facilities.

32 (12) Facility extensions not to exceed four miles in length which
33 are required for the transfer of passengers from or to exclusive
34 public mass transit guideway or busway public transit services.

35 (13) A project for the development of a regional transportation
36 improvement program, the state transportation improvement
37 program, or a congestion management program prepared pursuant
38 to Section 65089 of the Government Code.

39 (14) Any project or portion thereof located in another state
40 which will be subject to environmental impact review pursuant to

1 the National Environmental Policy Act of 1969 (42 U.S.C. Sec.
2 4321 et seq.) or similar state laws of that state. Any emissions or
3 discharges that would have a significant effect on the environment
4 in this state are subject to this division.

5 (15) Projects undertaken by a local agency to implement a rule
6 or regulation imposed by a state agency, board, or commission
7 under a certified regulatory program pursuant to Section 21080.5.
8 Any site-specific effect of the project which was not analyzed as
9 a significant effect on the environment in the plan or other written
10 documentation required by Section 21080.5 is subject to this
11 division.

12 (c) If a lead agency determines that a proposed project, not
13 otherwise exempt from this division, would not have a significant
14 effect on the environment, the lead agency shall adopt a negative
15 declaration to that effect. The negative declaration shall be prepared
16 for the proposed project in either of the following circumstances:

17 (1) There is no substantial evidence, in light of the whole record
18 before the lead agency, that the project may have a significant
19 effect on the environment.

20 (2) An initial study identifies potentially significant effects on
21 the environment, but (A) revisions in the project plans or proposals
22 made by, or agreed to by, the applicant before the proposed
23 negative declaration and initial study are released for public review
24 would avoid the effects or mitigate the effects to a point where
25 clearly no significant effect on the environment would occur, and
26 (B) there is no substantial evidence, in light of the whole record
27 before the lead agency, that the project, as revised, may have a
28 significant effect on the environment.

29 (d) If there is substantial evidence, in light of the whole record
30 before the lead agency, that the project may have a significant
31 effect on the environment, an environmental impact report shall
32 be prepared.

33 (e) (1) For the purposes of this section and this division,
34 substantial evidence includes fact, a reasonable assumption
35 predicated upon fact, or expert opinion supported by fact.

36 (2) Substantial evidence is not argument, speculation,
37 unsubstantiated opinion or narrative, evidence that is clearly
38 inaccurate or erroneous, or evidence of social or economic impacts
39 that do not contribute to, or are not caused by, physical impacts
40 on the environment.

1 (f) As a result of the public review process for a mitigated
2 negative declaration, including administrative decisions and public
3 hearings, the lead agency may conclude that certain mitigation
4 measures identified pursuant to paragraph (2) of subdivision (c)
5 are infeasible or otherwise undesirable. In those circumstances,
6 the lead agency, prior to approving the project, may delete those
7 mitigation measures and substitute for them other mitigation
8 measures that the lead agency finds, after holding a public hearing
9 on the matter, are equivalent or more effective in mitigating
10 significant effects on the environment to a less than significant
11 level and that do not cause any potentially significant effect on the
12 environment. If those new mitigation measures are made conditions
13 of project approval or are otherwise made part of the project
14 approval, the deletion of the former measures and the substitution
15 of the new mitigation measures shall not constitute an action or
16 circumstance requiring recirculation of the mitigated negative
17 declaration.

18 (g) Nothing in this section shall preclude a project applicant or
19 any other person from challenging, in an administrative or judicial
20 proceeding, the legality of a condition of project approval imposed
21 by the lead agency. If, however, any condition of project approval
22 set aside by either an administrative body or court was necessary
23 to avoid or lessen the likelihood of the occurrence of a significant
24 effect on the environment, the lead agency's approval of the
25 negative declaration and project shall be invalid and a new
26 environmental review process shall be conducted before the project
27 can be reapproved, unless the lead agency substitutes a new
28 condition that the lead agency finds, after holding a public hearing
29 on the matter, is equivalent to, or more effective in, lessening or
30 avoiding significant effects on the environment and that does not
31 cause any potentially significant effect on the environment.

32 SEC. 2. Section 21080.5 of the Public Resources Code is
33 amended to read:

34 21080.5. (a) Except as provided in Section 21158.1, when the
35 regulatory program of a state agency requires a plan or other written
36 documentation containing environmental information and
37 complying with paragraph (3) of subdivision (d) to be submitted
38 in support of an activity listed in subdivision (b), the plan or other
39 written documentation may be submitted in lieu of the
40 environmental impact report required by this division if the

1 Secretary of the Natural Resources Agency has certified the
2 regulatory program pursuant to this section.

3 (b) This section applies only to regulatory programs or portions
4 thereof that involve either of the following:

5 (1) The issuance to a person of a lease, permit, license,
6 certificate, or other entitlement for use.

7 (2) The adoption or approval of standards, rules, regulations,
8 or plans for use in the regulatory program.

9 (c) A regulatory program certified pursuant to this section is
10 exempt from Chapter 3 (commencing with Section 21100), Chapter
11 4 (commencing with Section 21150), and Section 21167, except
12 as provided in Article 2 (commencing with Section 21157) of
13 Chapter 4.5.

14 (d) To qualify for certification pursuant to this section, a
15 regulatory program shall require the utilization of an
16 interdisciplinary approach that will ensure the integrated use of
17 the natural and social sciences in decisionmaking and that shall
18 meet all of the following criteria:

19 (1) The enabling legislation of the regulatory program does both
20 of the following:

21 (A) Includes protection of the environment among its principal
22 purposes.

23 (B) Contains authority for the administering agency to adopt
24 rules and regulations for the protection of the environment, guided
25 by standards set forth in the enabling legislation.

26 (2) The rules and regulations adopted by the administering
27 agency for the regulatory program do all of the following:

28 (A) Require that an activity will not be approved or adopted as
29 proposed if there are feasible alternatives or feasible mitigation
30 measures available that would substantially lessen a significant
31 adverse effect that the activity may have on the environment.

32 (B) Include guidelines for the orderly evaluation of proposed
33 activities and the preparation of the plan or other written
34 documentation in a manner consistent with the environmental
35 protection purposes of the regulatory program.

36 (C) Require the administering agency to consult with all public
37 agencies that have jurisdiction, by law, with respect to the proposed
38 activity.

1 (D) Require that final action on the proposed activity include
2 the written responses of the issuing authority to significant
3 environmental points raised during the evaluation process.

4 (E) Require the filing of a notice of the decision by the
5 administering agency on the proposed activity with the Secretary
6 of the Natural Resources Agency. Those notices shall be available
7 for public inspection, and a list of the notices shall be posted on a
8 weekly basis in the Office of the Natural Resources Agency. Each
9 list shall remain posted for a period of 30 days.

10 (F) Require notice of the filing of the plan or other written
11 documentation to be made to the public and to a person who
12 requests, in writing, notification. The notification shall be made
13 in a manner that will provide the public or a person requesting
14 notification with sufficient time to review and comment on the
15 filing.

16 (3) The plan or other written documentation required by the
17 regulatory program does both of the following:

18 (A) Includes a description of the proposed activity with
19 alternatives to the activity, and mitigation measures to minimize
20 any significant adverse effect on the environment of the activity.

21 (B) Is available for a reasonable time for review and comment
22 by other public agencies and the general public.

23 (e) (1) The Secretary of the Natural Resources Agency shall
24 certify a regulatory program that the secretary determines meets
25 all the qualifications for certification set forth in this section, and
26 withdraw certification on determination that the regulatory program
27 has been altered so that it no longer meets those qualifications.
28 Certification and withdrawal of certification shall occur only after
29 compliance with Chapter 3.5 (commencing with Section 11340)
30 of Part 1 of Division 3 of Title 2 of the Government Code.

31 (2) In determining whether or not a regulatory program meets
32 the qualifications for certification set forth in this section, the
33 inquiry of the secretary shall extend only to the question of whether
34 the regulatory program meets the generic requirements of
35 subdivision (d). The inquiry may not extend to individual decisions
36 to be reached under the regulatory program, including the nature
37 of specific alternatives or mitigation measures that might be
38 proposed to lessen any significant adverse effect on the
39 environment of the activity.

1 (3) If the secretary determines that the regulatory program
2 submitted for certification does not meet the qualifications for
3 certification set forth in this section, the secretary shall adopt
4 findings setting forth the reasons for the determination.

5 (f) After a regulatory program has been certified pursuant to
6 this section, a proposed change in the program that could affect
7 compliance with the qualifications for certification specified in
8 subdivision (d) may be submitted to the Secretary of the Natural
9 Resources Agency for review and comment. The scope of the
10 secretary's review shall extend only to the question of whether the
11 regulatory program meets the generic requirements of subdivision
12 (d). The review may not extend to individual decisions to be
13 reached under the regulatory program, including specific
14 alternatives or mitigation measures that might be proposed to lessen
15 any significant adverse effect on the environment of the activity.
16 The secretary shall have 30 days from the date of receipt of the
17 proposed change to notify the state agency whether the proposed
18 change will alter the regulatory program so that it no longer meets
19 the qualification for certification established in this section and
20 will result in a withdrawal of certification as provided in this
21 section.

22 (g) An action or proceeding to attack, review, set aside, void,
23 or annul a determination or decision of a state agency approving
24 or adopting a proposed activity under a regulatory program that
25 has been certified pursuant to this section on the basis that the plan
26 or other written documentation prepared pursuant to paragraph (3)
27 of subdivision (d) does not comply with this section shall be
28 commenced not later than 30 days from the date of the filing of
29 notice of the approval or adoption of the activity.

30 (h) (1) An action or proceeding to attack, review, set aside,
31 void, or annul a determination of the Secretary of the Natural
32 Resources Agency to certify a regulatory program pursuant to this
33 section on the basis that the regulatory program does not comply
34 with this section shall be commenced within 30 days from the date
35 of certification by the secretary.

36 (2) In an action brought pursuant to paragraph (1), the inquiry
37 shall extend only to whether there was a prejudicial abuse of
38 discretion by the secretary. Abuse of discretion is established if
39 the secretary has not proceeded in a manner required by law or if
40 the determination is not supported by substantial evidence.

1 (i) For purposes of this section, a county agricultural
2 commissioner is a state agency.

3 (j) For purposes of this section, an air quality management
4 district or air pollution control district is a state agency, except
5 that the approval, if any, by a district of a nonattainment area plan
6 is subject to this section only if, and to the extent that, the approval
7 adopts or amends rules or regulations.

8 SEC. 3. Section 21080.23 of the Public Resources Code is
9 amended to read:

10 21080.23. (a) This division does not apply to any project which
11 consists of the inspection, maintenance, repair, restoration,
12 reconditioning, relocation, replacement, or removal of an existing
13 pipeline, as defined in subdivision (a) of Section 51010.5 of the
14 Government Code, or any valve, flange, meter, or other piece of
15 equipment that is directly attached to the pipeline, if the project
16 meets all of the following conditions:

17 (1) (A) The project is less than eight miles in length.

18 (B) Notwithstanding subparagraph (A), actual construction and
19 excavation activities undertaken to achieve the maintenance, repair,
20 restoration, reconditioning, relocation, replacement, or removal
21 of an existing pipeline are not undertaken over a length of more
22 than one-half mile at any one time.

23 (2) The project consists of a section of pipeline that is not less
24 than eight miles from any section of pipeline that has been subject
25 to an exemption pursuant to this section in the past 12 months.

26 (3) The project is not solely for the purpose of excavating soil
27 that is contaminated by hazardous materials, and, to the extent not
28 otherwise expressly required by law, the party undertaking the
29 project immediately informs the lead agency of the discovery of
30 contaminated soil.

31 (4) To the extent not otherwise expressly required by law, the
32 person undertaking the project has, in advance of undertaking the
33 project, prepared a plan that will result in notification of the
34 appropriate agencies so that they may take action, if determined
35 to be necessary, to provide for the emergency evacuation of
36 members of the public who may be located in close proximity to
37 the project.

38 (5) Project activities are undertaken within an existing
39 right-of-way and the right-of-way is restored to its condition prior
40 to the project.

(6) The project applicant agrees to comply with all conditions otherwise authorized by law, imposed by the city or county planning department as part of any local agency permit process, that are required to mitigate potential impacts of the proposed project, and to otherwise comply with the Keene-Nejedly California Wetlands Preservation Act (Chapter 7 (commencing with Section 5810) of Division 5), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and other applicable state laws, and with all applicable federal laws.

(b) If a project meets all of the requirements of subdivision (a), the person undertaking the project shall do all of the following:

(1) Notify, in writing, any affected public agency, including, but not limited to, any public agency having permit, land use, environmental, public health protection, or emergency response authority of the exemption of the project from this division by subdivision (a).

(2) Provide notice to the public in the affected area in a manner consistent with paragraph (3) of subdivision (b) of Section 21092.

(3) In the case of private rights-of-way over private property, receive from the underlying property owner permission for access to the property.

(4) Comply with all conditions otherwise authorized by law, imposed by the city or county planning department as part of any local agency permit process, that are required to mitigate potential impacts of the proposed project, and otherwise comply with the Keene-Nejedly California Wetlands Preservation Act (Chapter 7 (commencing with Section 5810) of Division 5), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and other applicable state laws, and with all applicable federal laws.

(c) This section does not apply to either of the following:

(1) A project in which the diameter of the pipeline is increased.

(2) A project undertaken within the boundaries of an oil refinery.

SEC. 4. Section 21080.24 of the Public Resources Code is amended to read:

21080.24. This division does not apply to the issuance, modification, amendment, or renewal of a permit by an air pollution control district or air quality management district pursuant to Title V, as defined in Section 39053.3 of the Health and Safety Code,

1 or pursuant to a district Title V program established pursuant to
2 Sections 42301.10, 42301.11, and 42301.12 of the Health and
3 Safety Code, unless the issuance, modification, amendment, or
4 renewal authorizes a physical or operational change to a source or
5 facility.

6 SEC. 5. Section 21083.05 of the Public Resources Code is
7 amended to read:

8 21083.05. The Office of Planning and Research and the Natural
9 Resources Agency shall periodically update the guidelines for the
10 mitigation of greenhouse gas emissions or the effects of greenhouse
11 gas emissions as required by this division, including, but not limited
12 to, effects associated with transportation or energy consumption,
13 to incorporate new information or criteria established by the State
14 Air Resources Board pursuant to Division 25.5 (commencing with
15 Section 38500) of the Health and Safety Code.

16 SEC. 6. Section 21084 of the Public Resources Code is
17 amended to read:

18 21084. (a) The guidelines prepared and adopted pursuant to
19 Section 21083 shall include a list of classes of projects that have
20 been determined not to have a significant effect on the environment
21 and that shall be exempt from this division. In adopting the
22 guidelines, the Secretary of the Natural Resources Agency shall
23 make a finding that the listed classes of projects referred to in this
24 section do not have a significant effect on the environment.

25 (b) A project's greenhouse gas emissions shall not, in and of
26 themselves, be deemed to cause an exemption adopted pursuant
27 to subdivision (a) to be inapplicable if the project complies with
28 all applicable regulations or requirements adopted to implement
29 statewide, regional, or local plans consistent with Section 15183.5
30 of Title 14 of the California Code of Regulations.

31 (c) A project that may result in damage to scenic resources,
32 including, but not limited to, trees, historic buildings, rock
33 outcroppings, or similar resources, within a highway designated
34 as an official state scenic highway, pursuant to Article 2.5
35 (commencing with Section 260) of Chapter 2 of Division 1 of the
36 Streets and Highways Code, shall not be exempted from this
37 division pursuant to subdivision (a). This subdivision does not
38 apply to improvements as mitigation for a project for which a
39 negative declaration has been approved or an environmental impact
40 report has been certified.

(d) A project located on a site that is included on any list compiled pursuant to Section 65962.5 of the Government Code shall not be exempted from this division pursuant to subdivision (a).

(e) A project that may cause a substantial adverse change in the significance of an historical resource, as specified in Section 21084.1, shall not be exempted from this division pursuant to subdivision (a).

SEC. 7. Section 21091 of the Public Resources Code is amended to read:

21091. (a) The public review period for a draft environmental impact report may not be less than 30 days. If the draft environmental impact report is submitted to the State Clearinghouse for review, the review period shall be at least 45 days, and the lead agency shall provide a sufficient number of copies of the document to the State Clearinghouse for review and comment by state agencies.

(b) The public review period for a proposed negative declaration or proposed mitigated negative declaration may not be less than 20 days. If the proposed negative declaration or proposed mitigated negative declaration is submitted to the State Clearinghouse for review, the review period shall be at least 30 days, and the lead agency shall provide a sufficient number of copies of the document to the State Clearinghouse for review and comment by state agencies.

(c) (1) Notwithstanding subdivisions (a) and (b), if a draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration is submitted to the State Clearinghouse for review and the period of review by the State Clearinghouse is longer than the public review period established pursuant to subdivision (a) or (b), whichever is applicable, the public review period shall be at least as long as the period of review and comment by state agencies as established by the State Clearinghouse.

(2) The public review period and the state agency review period may, but are not required to, begin and end at the same time. Day one of the state agency review period shall be the date that the State Clearinghouse distributes the CEQA document to state agencies.

1 (3) If the submittal of a CEQA document is determined by the
2 State Clearinghouse to be complete, the State Clearinghouse shall
3 distribute the document within three working days from the date
4 of receipt. The State Clearinghouse shall specify the information
5 that will be required in order to determine the completeness of the
6 submittal of a CEQA document.

7 (d) (1) The lead agency shall consider comments it receives on
8 a draft environmental impact report, proposed negative declaration,
9 or proposed mitigated negative declaration if those comments are
10 received within the public review period.

11 (2) (A) With respect to the consideration of comments received
12 on a draft environmental impact report, the lead agency shall
13 evaluate comments on environmental issues that are received from
14 persons who have reviewed the draft and shall prepare a written
15 response pursuant to subparagraph (B). The lead agency may also
16 respond to comments that are received after the close of the public
17 review period.

18 (B) The written response shall describe the disposition of each
19 significant environmental issue that is raised by commenters. The
20 responses shall be prepared consistent with Section 15088 of Title
21 14 of the California Code of Regulations.

22 (3) (A) With respect to the consideration of comments received
23 on a draft environmental impact report, proposed negative
24 declaration, proposed mitigated negative declaration, or notice
25 pursuant to Section 21080.4, the lead agency shall accept comments
26 via email and shall treat email comments as equivalent to written
27 comments.

28 (B) Any law or regulation relating to written comments received
29 on a draft environmental impact report, proposed negative
30 declaration, proposed mitigated negative declaration, or notice
31 received pursuant to Section 21080.4, shall also apply to email
32 comments received for those reasons.

33 (e) (1) Criteria for shorter review periods by the State
34 Clearinghouse for documents that must be submitted to the State
35 Clearinghouse shall be set forth in the written guidelines issued
36 by the Office of Planning and Research and made available to the
37 public.

38 (2) Those shortened review periods may not be less than 30
39 days for a draft environmental impact report and 20 days for a
40 negative declaration.

1 (3) A request for a shortened review period shall only be made
2 in writing by the decisionmaking body of the lead agency to the
3 Office of Planning and Research. The decisionmaking body may
4 designate by resolution or ordinance a person authorized to request
5 a shortened review period. A designated person shall notify the
6 decisionmaking body of this request.

7 (4) A request approved by the State Clearinghouse shall be
8 consistent with the criteria set forth in the written guidelines of
9 the Office of Planning and Research.

10 (5) A shortened review period may not be approved by the
11 Office of Planning and Research for a proposed project of
12 statewide, regional, or areawide environmental significance as
13 determined pursuant to Section 21083.

14 (6) An approval of a shortened review period shall be given
15 prior to, and reflected in, the public notice required pursuant to
16 Section 21092.

17 (f) Prior to carrying out or approving a project for which a
18 negative declaration has been adopted, the lead agency shall
19 consider the negative declaration together with comments that
20 were received and considered pursuant to paragraph (1) of
21 subdivision (d).

22 SEC. 8. Section 21092.6 of the Public Resources Code is
23 amended to read:

24 21092.6. (a) The lead agency shall consult the lists compiled
25 pursuant to Section 65962.5 of the Government Code to determine
26 whether the project and any alternatives are located on a site which
27 is included on any list. The lead agency shall indicate whether a
28 site is on any list not already identified by the applicant. The lead
29 agency shall specify the list and include the information in the
30 statement required pursuant to subdivision (f) of Section 65962.5
31 of the Government Code, in the notice required pursuant to Section
32 21080.4, a negative declaration, and a draft environmental impact
33 report. The requirement in this section to specify any list shall not
34 be construed to limit compliance with this division.

35 (b) If a project or any alternatives are located on a site which is
36 included on any of the lists compiled pursuant to Section 65962.5
37 of the Government Code and the lead agency did not accurately
38 specify or did not specify any list pursuant to subdivision (a), the
39 California Environmental Protection Agency shall notify the lead
40 agency specifying any list with the site when it receives notice

1 pursuant to Section 21080.4, a negative declaration, and a draft
2 environmental impact report. The California Environmental
3 Protection Agency shall not be liable for failure to notify the lead
4 agency pursuant to this subdivision.

5 SEC. 9. Section 21094 of the Public Resources Code, as
6 amended by Section 3.5 of Chapter 496 of the Statutes of 2010, is
7 amended to read:

8 21094. (a) (1) If a prior environmental impact report has been
9 prepared and certified for a program, plan, policy, or ordinance,
10 the lead agency for a later project that meets the requirements of
11 this section shall examine significant effects of the later project
12 upon the environment by using a tiered environmental impact
13 report, except that the report on the later project is not required to
14 examine those effects that the lead agency determines were either
15 of the following:

16 (A) Mitigated or avoided pursuant to paragraph (1) of
17 subdivision (a) of Section 21081 as a result of the prior
18 environmental impact report.

19 (B) Examined at a sufficient level of detail in the prior
20 environmental impact report to enable those effects to be mitigated
21 or avoided by site-specific revisions, the imposition of conditions,
22 or by other means in connection with the approval of the later
23 project.

24 (2) If a prior environmental impact report has been prepared
25 and certified for a program, plan, policy, or ordinance, and the
26 lead agency makes a finding of overriding consideration pursuant
27 to subdivision (b) of Section 21081, the lead agency for a later
28 project that uses a tiered environmental impact report from that
29 program, plan, policy, or ordinance may incorporate by reference
30 that finding of overriding consideration if all of the following
31 conditions are met:

32 (A) The lead agency determines that the project's significant
33 impacts on the environment are not greater than or different from
34 those identified in the prior environmental impact report.

35 (B) The lead agency incorporates into the later project all the
36 applicable mitigation measures identified by the prior
37 environmental impact report.

38 (C) The prior finding of overriding considerations was not based
39 on a determination that mitigation measures should be identified
40 and approved in a subsequent environmental review.

1 (D) The prior environmental impact report was certified not
2 more than three years before the date findings are made pursuant
3 to Section 21081 for the later project.

4 (E) The lead agency has determined that the mitigation measures
5 or alternatives found to be infeasible in the prior environmental
6 impact report pursuant to paragraph (3) of subdivision (a) of
7 Section 21081 remain infeasible based on the criteria set forth in
8 that section.

9 (b) This section applies only to a later project that the lead
10 agency determines is all of the following:

11 (1) Consistent with the program, plan, policy, or ordinance for
12 which an environmental impact report has been prepared and
13 certified.

14 (2) Consistent with applicable local land use plans and zoning
15 of the city, county, or city and county in which the later project
16 would be located.

17 (3) Not subject to Section 21166.

18 (c) For purposes of compliance with this section, an initial study
19 shall be prepared to assist the lead agency in making the
20 determinations required by this section. The initial study shall
21 analyze whether the later project may cause significant effects on
22 the environment that were not examined in the prior environmental
23 impact report.

24 (d) All public agencies that propose to carry out or approve the
25 later project may utilize the prior environmental impact report and
26 the environmental impact report on the later project to fulfill the
27 requirements of Section 21081.

28 (e) (1) If a lead agency determines pursuant to this subdivision
29 that a cumulative effect has been adequately addressed in a prior
30 environmental impact report, that cumulative effect is not required
31 to be examined in a later environmental impact report, mitigated
32 negative declaration, or negative declaration for purposes of
33 subparagraph (B) of paragraph (1) of subdivision (a).

34 (2) When assessing whether there is new significant cumulative
35 effect, the lead agency shall consider whether the incremental
36 effects of the project are cumulatively considerable.

37 (3) (A) For purposes of paragraph (2), if the lead agency
38 determines the incremental effects of the project are significant
39 when viewed in connection with the effects of past, present, and

1 probable future projects, the incremental effects of a project are
2 cumulatively considerable.

3 (B) If the lead agency determines incremental effects of a project
4 are cumulatively considerable, the later environmental impact
5 report, mitigated negative declaration, or negative declaration shall
6 examine those effects.

7 (4) If the lead agency makes one of the following
8 determinations, the cumulative effects of a project are adequately
9 addressed for purposes of paragraph (1):

10 (A) The cumulative effect has been mitigated or avoided as a
11 result of the prior environmental impact report and findings adopted
12 pursuant to paragraph (1) of subdivision (a) of Section 21081 as
13 a result of the prior environmental impact report.

14 (B) The cumulative effect has been examined at a sufficient
15 level of detail in the prior environmental impact report to enable
16 the effect to be mitigated or avoided by site-specific revisions, the
17 imposition of conditions, or by other means in connection with
18 the approval of the later project.

19 (f) If tiering is used pursuant to this section, an environmental
20 impact report prepared for a later project shall refer to the prior
21 environmental impact report and state where a copy of the prior
22 environmental impact report may be examined.

23 (g) This section shall remain in effect only until January 1, 2016,
24 and as of that date is repealed, unless a later enacted statute, that
25 is enacted before January 1, 2016, deletes or extends that date.

26 SEC. 10. Section 21151.1 of the Public Resources Code is
27 amended to read:

28 21151.1. (a) Notwithstanding paragraph (6) of subdivision (b)
29 of Section 21080, or Section 21080.5 or 21084, or any other
30 provision of law, except as provided in this section, a lead agency
31 shall prepare or cause to be prepared by contract, and certify the
32 completion of, an environmental impact report or, if appropriate,
33 a modification, addendum, or supplement to an existing
34 environmental impact report, for a project involving any of the
35 following:

36 (1) The burning of municipal wastes, hazardous waste, or
37 refuse-derived fuel, including, but not limited to, tires, if the project
38 is either of the following:

39 (A) The construction of a new facility.

1 (B) The expansion of an existing facility that burns hazardous
2 waste that would increase its permitted capacity by more than 10
3 percent.

4 (2) The initial issuance of a hazardous waste facilities permit
5 to a land disposal facility, as defined in subdivision (d) of Section
6 25199.1 of the Health and Safety Code.

7 (3) The initial issuance of a hazardous waste facilities permit
8 pursuant to Section 25200 of the Health and Safety Code to an
9 offsite large treatment facility, as defined pursuant to subdivision
10 (d) of Section 25205.1 of the Health and Safety Code.

11 (4) A base reuse plan as defined in Section 21083.8.1. The
12 Legislature hereby finds that no reimbursement is required pursuant
13 to Section 6 of Article XIII B of the California Constitution for an
14 environmental impact report for a base reuse plan if an
15 environmental impact report is otherwise required for that base
16 reuse plan pursuant to any other provision of this division.

17 (b) For purposes of clause (ii) of subparagraph (A) of paragraph
18 (1) of subdivision (a), the amount of expansion of an existing
19 facility shall be calculated by comparing the proposed facility
20 capacity with whichever of the following is applicable:

21 (1) The facility capacity authorized in the facility's hazardous
22 waste facilities permit pursuant to Section 25200 of the Health and
23 Safety Code or its grant of interim status pursuant to Section
24 25200.5 of the Health and Safety Code, or the facility capacity
25 authorized in a state or local agency permit allowing the
26 construction or operation of a facility for the burning of hazardous
27 waste, granted before January 1, 1990.

28 (2) The facility capacity authorized in the facility's original
29 hazardous waste facilities permit, grant of interim status, or a state
30 or local agency permit allowing the construction or operation of
31 a facility for the burning of hazardous waste, granted on or after
32 January 1, 1990.

33 (c) For purposes of paragraphs (2) and (3) of subdivision (a),
34 the initial issuance of a hazardous waste facilities permit does not
35 include the issuance of a closure or postclosure permit pursuant
36 to Chapter 6.5 (commencing with Section 25100) of Division 20
37 of the Health and Safety Code.

38 (d) Paragraph (1) of subdivision (a) does not apply to a project
39 that does any of the following:

1 (1) Exclusively burns digester gas produced from manure or
2 any other solid or semisolid animal waste.

3 (2) Exclusively burns methane gas produced from a disposal
4 site, as defined in Section 40122, that is used only for the disposal
5 of solid waste, as defined in Section 40191.

6 (3) Exclusively burns forest, agricultural, wood, or other biomass
7 wastes.

8 (4) Exclusively burns hazardous waste in an incineration unit
9 that is transportable and that is either at a site for not longer than
10 three years or is part of a remedial or removal action. For purposes
11 of this paragraph, “transportable” means any equipment that
12 performs a “treatment” as defined in Section 66216 of Title 22 of
13 the California Code of Regulations, and that is transported on a
14 vehicle as defined in Section 66230 of Title 22 of the California
15 Code of Regulations, as those sections read on June 1, 1991.

16 (5) Exclusively burns refinery waste in a flare on the site of
17 generation.

18 (6) Exclusively burns in a flare methane gas produced at a
19 municipal sewage treatment plant.

20 (7) Exclusively burns hazardous waste, or exclusively burns
21 hazardous waste as a supplemental fuel, as part of a research,
22 development, or demonstration project that, consistent with federal
23 regulations implementing the Resource Conservation and Recovery
24 Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), has been
25 determined to be innovative and experimental by the Department
26 of Toxic Substances Control and that is limited in type and quantity
27 of waste to that necessary to determine the efficacy and
28 performance capabilities of the technology or process. However,
29 a facility that operated as a research, development, or demonstration
30 project and for which an application is thereafter submitted for a
31 hazardous waste facility permit for operation other than as a
32 research, development, or demonstration project shall be considered
33 a new facility for the burning of hazardous waste and shall be
34 subject to subdivision (a) of Section 21151.1.

35 (8) Exclusively burns soils contaminated only with petroleum
36 fuels or the vapors from these soils.

37 (9) Exclusively treats less than 3,000 pounds of hazardous waste
38 per day in a thermal processing unit operated in the absence of
39 open flame, and submits a worst-case health risk assessment of
40 the technology to the Department of Toxic Substances Control for

1 review and distribution to the interested public. This assessment
2 shall be prepared in accordance with guidelines set forth in the Air
3 Toxics Assessment Manual of the California Air Pollution Control
4 Officers Association.

5 (10) Exclusively burns less than 1,200 pounds per day of
6 medical waste, as defined in Section 117690 of the Health and
7 Safety Code, on hospital sites.

8 (11) Exclusively burns chemicals and fuels as part of firefighter
9 training.

10 (12) Exclusively conducts open burns of explosives subject to
11 the requirements of the air pollution control district or air quality
12 management district and in compliance with OSHA and Cal-OSHA
13 regulations.

14 (13) Exclusively conducts onsite burning of less than 3,000
15 pounds per day of fumes directly from a manufacturing or
16 commercial process.

17 (14) Exclusively conducts onsite burning of hazardous waste
18 in an industrial furnace that recovers hydrogen chloride from the
19 flue gas if the hydrogen chloride is subsequently sold, distributed
20 in commerce, or used in a manufacturing process at the site where
21 the hydrogen chloride is recovered, and the burning is in
22 compliance with the requirements of the air pollution control
23 district or air quality management district and the Department of
24 Toxic Substances Control.

25 (e) Paragraph (1) of subdivision (a) does not apply to a project
26 for which the State Energy Resources Conservation and
27 Development Commission has assumed jurisdiction under Chapter
28 6 (commencing with Section 25500) of Division 15.

29 (f) Paragraphs (2) and (3) of subdivision (a) do not apply if the
30 facility only manages hazardous waste that is identified or listed
31 pursuant to Section 25140 or 25141 of the Health and Safety Code
32 on or after January 1, 1992, but not before that date, or only
33 conducts activities that are regulated pursuant to Chapter 6.5
34 (commencing with Section 25100) of Division 20 of the Health
35 and Safety Code on or after January 1, 1992, but not before that
36 date.

37 (g) This section does not exempt a project from any other
38 requirement of this division.

39 (h) For purposes of this section, offsite facility means a facility
40 that serves more than one generator of hazardous waste.

1 SEC. 11. Section 21159.9 of the Public Resources Code is
2 amended to read:

3 21159.9. The Office of Planning and Research shall implement,
4 utilizing existing resources, a public assistance and information
5 program, to ensure efficient and effective implementation of this
6 division, to do all of the following:

7 (a) Establish a public education and training program for
8 planners, developers, and other interested parties to assist them in
9 implementing this division.

10 (b) Establish and maintain a database to assist in the preparation
11 of environmental documents.

12 (c) Establish and maintain a central repository for the collection,
13 storage, retrieval, and dissemination of notices of exemption,
14 notices of preparation, notices of determination, and notices of
15 completion provided to the office, and make the notices available
16 through the Internet. The office may coordinate with another state
17 agency for that agency to make the notices available through the
18 Internet.

19 (d) Provide to the California State Library copies of documents
20 submitted in electronic format to the Office of Planning and
21 Research pursuant to this division. The California State Library
22 shall be the repository for those electronic documents, which shall
23 be made available for viewing by the general public upon request.

24 SEC. 12. Section 21167.10 of the Public Resources Code is
25 amended to read:

26 21167.10. (a) Within five business days of the filing of a notice
27 required by subdivision (a) or (b) of Section 21108, or subdivision
28 (a) or (b) of Section 21152 by the lead agency, a person wishing
29 to bring an action or a proceeding pursuant to Section 21167,
30 21168, or 21168.5 may file with the lead agency and the real party
31 in interest a notice requesting mediation.

32 (b) Within five business days of the receipt of the notice
33 requesting mediation, a lead agency may respond to the person by
34 accepting the request for mediation and proceed with mediation.

35 (c) The request for mediation is deemed denied if the lead
36 agency fails to respond within five business days of receiving the
37 request for mediation.

38 (d) The limitation periods provided pursuant to this chapter shall
39 be tolled until the completion of the mediation conducted pursuant
40 to this section.

(e) This section does not apply in cases where the lead agency has not filed the notice required by subdivision (a) or (b) of Section 21108, or subdivision (a) or (b) of Section 21152.

(f) (1) Except as set forth in paragraph (2), this section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

(2) Notwithstanding paragraph (1), the tolling of the limitation periods provided pursuant to subdivision (d) shall apply if a mediation conducted pursuant to this section is completed on or after January 1, 2016.

~~SEC. 13. Section 21169 of the Public Resources Code is repealed.~~

~~SEC. 14. Section 21170 of the Public Resources Code is repealed.~~

~~SEC. 15. Section 21171 of the Public Resources Code is repealed.~~

~~SEC. 16.~~

~~SEC. 13.~~ Section 21172 of the Public Resources Code is repealed.

~~SEC. 17.~~

~~SEC. 14.~~ Section 21172.5 of the Public Resources Code is repealed.

~~SEC. 18.~~

~~SEC. 15.~~ Section 21175 of the Public Resources Code is repealed.

~~SEC. 19.~~

~~SEC. 16.~~ Section 21176 of the Public Resources Code is repealed.